

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-160493
	:	TRIAL NO. B-1100702
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
NAJEE JONES,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Najee Jones appeals from the trial court’s judgment resentencing him on a weapons-under-disability (“WUD”) offense following a remand from this court. We affirm.

Jones entered into a plea agreement in which he pled guilty to three counts of felonious assault with gun specifications and to one count of WUD. The state dismissed the remaining eight counts in Jones’s indictment. The trial court sentenced Jones to consecutive prison terms, for an aggregate sentence of 32 years’ incarceration. Jones appealed. In that appeal, we reversed and vacated a five-year prison term imposed by the trial court on the WUD offense, and remanded the cause for resentencing because the statutory maximum for the offense, a third-degree felony, was 36 months. *State v. Jones*, 1st Dist. Hamilton No. C-110603, 2012-Ohio-2075. The order of remand stated, “We, therefore, sustain Jones’s second assignment of error only to the extent that the trial court imposed a five-year term

for the weapons-under-disability offense, instead of a term within the statutory range. We vacate the sentence for the weapons-under-disability offense and remand this cause to the trial court for resentencing on only that offense.” *Id.* at ¶ 24. We affirmed the trial court’s judgment in all other respects.

On remand, the trial court conducted a hearing and resentenced Jones to a 36-month prison term on the WUD charge, to be served consecutively to Jones’s felonious-assault-with-gun-specifications sentences, for an aggregate prison term of 30 years with credit for time served. The trial court made the findings required for consecutive sentences under R.C. 2929.14(C)(4) on the record and in the judgment entry.

In his two assignments of error, Jones argues, (1) the trial court committed reversible error by improperly resentencing him, and (2) his trial counsel was ineffective by failing to offer mitigation and failing to argue that his felonious-assault offenses were allied offenses of similar import. Neither assignment of error has merit.

Jones first seems to contend that the trial court should have conducted a de novo hearing as to all of his offenses. In a case in which the sentence failed to include a mandatory driver’s license suspension, the Ohio Supreme Court held that, although the sentence was void, only the offending portion of the sentence was subject to correction on remand. *State v. Harris*, 132 Ohio St.3d 318, 2012-Ohio-1908, 972 N.E.2d 509, ¶ 17-18. In Jones’s first appeal, this court vacated Jones’s WUD sentence, only. On remand, the trial court was therefore limited to resentencing Jones to a term within the statutory range for the WUD offense. The trial court lacked the authority to hold a de novo sentencing hearing as to all of Jones’s sentences. Further, despite Jones’s assertion to the contrary, the record

reflects that the trial court did, indeed, conduct a de novo hearing regarding the WUD sentence. During the hearing, Jones and his attorney were present and were offered the opportunity to present mitigation or to otherwise address the court. Jones's attorney chose to offer nothing by way of mitigation. Jones personally addressed the court and made an allied-offenses argument concerning his felonious-assault offenses. The limited remand precluded the trial court from addressing that argument. Further, the issue was res judicata. *See State v. Temaj-Felix*, 1st Dist. Hamilton No. C-140052, 2015-Ohio-3966, ¶ 15. Jones also contends in this assignment of error that his sentence is contrary to law because the trial court failed to consider the purposes and principles of sentencing. In determining the most effective way to comply with the purposes and principles of sentencing, a trial court "shall consider" the seriousness and recidivism factors set forth in R.C. 2929.12. Here, the court stated that it had considered the relevant seriousness and recidivism factors as part of its decision to impose consecutive sentences. Accordingly, we do not find that the trial court's corrected sentence of 36 months' incarceration on the WUD offense is clearly and convincingly contrary to law. *See State v. White*, 1st Dist. Hamilton No. C-160493, 2013-Ohio-4225. The first assignment of error is overruled.

We also overrule the second assignment of error. Jones has not argued, let alone demonstrated, that counsel failed to offer mitigation that should have been presented at his sentencing hearing, and that the failure to do so affected his sentence. *See Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989). Further, because an allied-offenses argument would have been improper, we hold that Jones's trial counsel was not ineffective for failing to make such an argument. *See id.*

Judgment affirmed.

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A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

ZAYAS, P.J., MYERS and GORMAN, JJ.

ROBERT H. GORMAN, retired, from the First Appellate District, sitting by assignment.

To the clerk:

Enter upon the journal of the court on April 7, 2017
per order of the court _____.

Presiding Judge